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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 344

JOHN ORMENTO, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner John Ormento makes the following reply to the Government's Brief in Opposition:

1. With respect to the testimony of the United States Attorney that he personally believed Cadieux was telling the truth at the first trial, the Government (U. S. Br. pp. 36-37) tacitly acknowledges that the Cadieux affidavit was not read to the jury as the court below had

incorrectly stated. Furthermore, the United States Attorney's testimony was not rebuttal; it was part of the Government's case in chief, and *no accusation had been made that the prosecutor suborned perjury;* the record citations to the Cadieux deposition by the government show only that Cadieux said she had made up her own mind to tell some untruths.

The issue of subornation of perjury was therefore a false issue prejudicially introduced into the case and again submitted by the trial court in the charge to the jury. It is sheer effrontery to suggest, as the Government does, that "this instruction," gave the defendants "more than their due." (U. S. Br. 37) The heart of the error complained of is the outrageous conduct of permitting the same person who prosecutes the case to take the witness stand and swear that he personally believed that a prosecution witness was telling the truth.

The rules of evidence and the canons of ethics should not be discarded and defendants given less than "their due" because this is a narcotics case. Contrast *Gajewski* v. *United States,* 321 F. 2d 261, 268 (8th Cir. 1963). It is significant that the Government cites no authority whatsoever in support of the extraordinarily prejudicial trial tactic here employed.

2. The Government's statement of the evidence beclouds the fact that there *was only one witness and no other evidence of any kind against the petitioner* John Ormento, and nothing said by this witness concerning John Ormento was corroborated in any way. The statements of other persons referred to by the Government are all out of one and the same mouth of the Government's witness who was an admitted perjurer

testifying for money.[1] Since there was no "substantial supporting evidence", (U. S. Br. p. 22) by the Government's own standards the conviction must be reversed.

3. In connection with the conduct of the trial, the Government obfuscates the issue. References to the first trial, although out of place, demonstrate the persistence of the Government in attempting to push through the courts a conspiracy indictment coupled with admittedly improper substantive counts, for the legal advantages which enhance its chances for conviction. The issue here is *only* whether the petitioner received a fair trial. Petitioner committed no misconduct before the jury. He was the victim of the prejudicial misconduct of others in the courtroom. It is clear, for example, that Salvatore Panico was psychotic and uncontrolable. (See *Panico* v. *United States*, decided by this Court October 21, 1963.)

The Government's "fears" (U. S. Br. 28-29) that to grant petitioner a new trial because of the accusations hurled by his co-defendant would arm defendants with "a weapon of incalculable danger to the judicial process" are groundless. It is not because of the accusation *alone*, which is itself an unusual occurrence, but because of the trial judge's remarks that this was a "put up job" that petitioner is entitled to a new trial.

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[1] In Revolt in the Mafia (1953) by former Inspector Smith who is well acquainted with "informers", Inspector Smith makes this pertinent observation (p. 132):

"The trouble with the paid informer is that he doesn't inform because he loves justice or the police, because he hates crime or the mob, or even because he wants revenge. He does it because he wants money and that is the one way to get it. If he doesn't have legitimate information, he may manufacture it, covering himself by saying that was what he heard or was told. He may lie boldly. 'I swear by Almighty God I saw it with my own eyes,' he will say, when he saw nothing. You pay your money but you don't have to rely on what you get."

It is literally fantastic that petitioner John Ormento would have been a part of a "put up job" with Salvatore Panico, sane or insane, to have himself denounced to the court and jury as a seller of narcotics. There is not an iota of evidence to justify the court's statement that it was a "put up job". Telling the jury to disregard, which even the Government concedes a jury could not do, is conclusive proof that the court realized that it had no right to say it.

4. The jury in this case took five days of deliberation to reach its verdict. It is to be noted that the Government has not even attempted to meet this Court's decision in *Kotteakos* v. *United States*, 328 U. S. 750 (1946) as it applies to this case.

For the foregoing additional reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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